UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEHMAN BROTHERS HOLDINGS INC., Plaintiff, -against- STANDARD PACIFIC MORTGAGE, INC. f/k/a FAMILY LENDING SERVICES, INC., EAGLE MORTGAGE HOLDINGS, LLC, as successor by merger to EAGLE HOME MORTGAGE, INC., and UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC, Defendants.	19cv4080 MEMORANDUM & ORDER

WILLIAM H. PAULEY III, Senior United States District Judge:

Defendants Standard Pacific Mortgage, Inc. f/k/a Family Lending Services, Inc., Universal American Mortgage Company, LLC, and Eagle Mortgage Holdings, LLC (collectively, "Defendants") move to withdraw the reference of adversary proceedings Nos. 16-01002, 16-01297, and 16-01383 (the "Adversary Proceedings") to the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The Adversary Proceedings are part of the underlying bankruptcy case, In re Lehman Brothers Holdings Inc., No. 08-13555, pending before Bankruptcy Judge Shelley C. Chapman. For the following reasons, Defendants' motion to withdraw the reference is denied.

BACKGROUND

Defendants sold residential mortgage loans to Lehman Brothers Bank, FSB ("LBB") pursuant to agreements that purportedly: (1) contained representations and warranties about the quality of the loans, and (2) obligated Defendants to indemnify LBB for liabilities

incurred for breaches of those promises. (Mem. of Law in Supp. of Defs.' Mot. to Withdraw Reference from Bankruptcy Ct. ("Withdrawal Mot."), at 2.) LBB then sold the loans to Lehman Brothers Holdings Inc. ("LBHI") and assigned LBHI its rights and remedies under the agreements with Defendants. (Withdrawal Mot., at 2–3.) LBHI, in turn, sold some of the loans to third parties and, in doing so, allegedly made representations and warranties concerning the loans that were coextensive with those made by Defendants to LBB. (Withdrawal Mot., at 2–3.)

On September 15, 2008, LBHI commenced one of the largest Chapter 11 bankruptcy cases in history. (See Withdrawal Mot., at 3.) Both the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation filed proofs of claim against LBHI, contending that LBHI breached the representations and warranties for the mortgage loans LBHI sold them. (Withdrawal Mot., at 3.) Proofs of claim were similarly filed by the trustees of certain securitization trusts. (Withdrawal Mot., at 4.) LBHI settled most of those claims for a total of several billion dollars. (Withdrawal Mot., at 3–4.) Since February 2016, LBHI has initiated adversary proceedings in the Bankruptcy Court against approximately 200 loan originators or brokers—including Defendants—seeking contractual indemnification (the "Indemnification Claims") arising out of the settlements. (Mem. of Law of Pl. in Opp. to Defs.' Mot. to Withdraw ("Opp."), at 3 n.2.) However, Defendants aver that their cases are somehow distinct from those brought against the roughly 193 other originators and brokers, and they request that their cases be withdrawn from the Bankruptcy Court and placed before this Court.

DISCUSSION

I. Legal Standard

"The district court may withdraw . . . any case or proceeding referred [to the Bankruptcy Court], on its own motion or on timely motion of any party, for cause shown."

28 U.S.C. § 157(d). Section 157 does not define "cause," but the Second Circuit has directed district courts to consider several factors in evaluating a motion to withdraw a bankruptcy reference. See In re Orion Pictures Corp., 4 F.3d 1095, 1101 (2d Cir. 1993). First, a court must determine "whether the claim or proceeding is core or non-core." In re Orion Pictures Corp., 4 F.3d at 1101. In light of the Supreme Court's decision in Stern v. Marshall, 564 U.S. 462 (2011), "which held that bankruptcy courts lack constitutional authority to enter final judgment on certain claims, courts in this District have concluded that the relevant inquiry under the first prong of the Orion test is . . . whether the bankruptcy court has the authority to finally adjudicate the matter." Lehman Bros. Holdings, Inc. v. Hometrust Mortg. Co. ("Hometrust"), 2015 WL 891663, at *2 (S.D.N.Y. Feb. 25, 2015) (alteration in original) (citation and quotation marks omitted). Second, a court must ascertain "whether [the claims are] legal or equitable." In re Orion Pictures Corp., 4 F.3d at 1101. "A determination as to [this factor] . . . is effectively a question of whether the defendant has a right to a jury trial on th[e] [asserted] claims." In re Iridium Operating LLC, 285 B.R. 822, 835 (S.D.N.Y. 2002). Finally, a court should weigh other considerations, including "efficiency, prevention of forum shopping, and uniformity in the administration of bankruptcy law." In re Orion Pictures Corp., 4 F.3d at 1101. The moving party bears the burden of showing cause to withdraw the bankruptcy reference. Nisselson v. Salim, 2013 WL 1245548, at *3 (S.D.N.Y. Mar. 25, 2013).

II. Assessment of the Orion Factors

Defendants' motion focuses heavily on the first two Orion factors. That is, Defendants largely contend that this Court should withdraw the bankruptcy reference because: (1) the Adversary Proceedings are non-core proceedings for which the Bankruptcy Court is precluded from entering final judgment, and (2) the Indemnification Claims are legal claims for

money damages, thereby entitling Defendants to a jury trial before a district judge. (See Withdrawal Mot., at 6–12, 16–18.) LBHI concedes that the Adversary Proceedings are non-core and that Defendants may be entitled to a jury trial, but it maintains that these factors are not dispositive and that the third Orion factor weighs against withdrawing the reference.

As a threshold matter, Defendants are correct that the Bankruptcy Court cannot enter final judgment or hold a jury trial in non-core matters. See Orion, 4 F.3d at 1100–01. And Defendants are also correct that some courts within this district have found cause to withdraw a bankruptcy reference where the proceeding is non-core and the movant is entitled to a jury trial. See In re Kentile Floors Inc., 1995 WL 479512, at *4 (S.D.N.Y. Aug. 10, 1995) ("The bankruptcy court cannot, in keeping with the Constitution, hold a jury trial in a non-core matter. For those reasons, the reference to the bankruptcy court should be withdrawn."). Nevertheless, Defendants' heavy reliance on the first two Orion factors in support of their motion—at least right now—is misplaced for two reasons.

First, while the parties agree that the Adversary Proceedings are non-core and that the Bankruptcy Court cannot enter final judgment, "this factor . . . does not end the Court's inquiry," Hometrust, 2015 WL 891663, at *3, since it is well established in this district that "the core/non-core determination . . . is not dispositive of a motion to withdraw a reference." In re Ne. Indus. Dev. Corp., 511 B.R. 51, 53 (S.D.N.Y. 2014); see also Mazer-Marino v. Macey (In re Jacoby & Meyers—Bankr. LLP), 2017 WL 4838388, at *4 (S.D.N.Y. Oct. 25, 2017); Lehman Bros. Holdings Inc. v. Intel Corp., 18 F. Supp. 3d 553, 557 (S.D.N.Y. 2014). Indeed, "when a bankruptcy court lacks authority to enter final judgment, the 'proper course is to issue proposed findings of fact and conclusions of law' that the 'district court will then review . . . de novo and

enter judgment.'" Hometrust, 2015 WL 891663, at *3 (alteration in original) (quoting Exec. Benefits Ins. Agency v. Arkinson, 573 U.S. 25, 31 (2014)).

Second, a party's entitlement to a jury trial does not necessitate immediate withdrawal of the bankruptcy reference. "Courts in this district [have] routinely den[ied] motions to withdraw the reference before a case is ready to be tried." In re HHH Choices Health Plan, LLC, 2019 WL 1409712, at *3 (Mar. 28, 2019); see also Schneider v. Riddick (In re Formica), 305 B.R. 147, 150 (S.D.N.Y. 2004) (holding in non-core proceeding that "[w]hile the plaintiff ha[d] a right to a jury trial, such a right [did] not compel withdrawing the reference until the case [was] ready to proceed to trial" (citations omitted)); Kenai Corp. v. Nat'l Union Fire Ins. Co. (In re Kenai Corp.), 136 B.R. 59, 61 (S.D.N.Y. 1992) ("A rule that would require a district court to withdraw a reference simply because a party is entitled to a jury trial . . . runs counter to the policy favoring judicial economy that underlies the statutory scheme governing the relationship between the district courts and bankruptcy courts." (citation omitted)). Notably, Defendants concede that the Adversary Proceedings are "at [an] early stage of litigation" and that "discovery has only just begun." (Withdrawal Mot., at 19.) As such, Defendants' insistence that the Adversary Proceedings are "likely to be resolved only after a full and fair [jury] trial" is speculative. (Withdrawal Mot., at 22.)

Thus, even where a proceeding is non-core and a party is entitled to a jury trial, "[t]he decision of whether and when to withdraw a reference still depends on case-sensitive [considerations]," including those encapsulated by the third Orion factor. Schneider, 305 B.R. at 150. If those considerations "counsel against withdrawing the reference, the Court need not grant [Defendants'] motion." Hometrust, 2015 WL 891663, at *3. And here, the third Orion factor weighs heavily against withdrawal.

LBHI has filed Indemnification Claims against roughly 200 defendants, and the Bankruptcy Court has shepherded these claims from the very beginning. Nonetheless, Defendants contend that their three cases require the unique attention of this Court. (See Withdrawal Mot., at 13–14.) On its face, Defendants' position borders on the absurd—and it is especially unfounded in this district, where it has been rejected time and again. Indeed, as the parties acknowledge, defendants in three other adversary proceedings concerning the Indemnification Claims previously moved before different judges in this district to withdraw the bankruptcy reference. (See Withdrawal Mot., at 20; Opp., at 1.) Each motion was denied on grounds that efficiency and uniformity would be best served by keeping the Indemnification Claims in the Bankruptcy Court. See Lehman Bros. Holdings Inc. v. iFreedom Direct Corp. ("iFreedom"), No. 16-cv-423, ECF No. 29, at 6 (S.D.N.Y. Mar. 7, 2017); Homestrust, 2015 WL 891663, at *3–4; accord Lehman Bros. Holding Inc. v. LHM Fin. Corp. ("LHM"), 2015 WL 2337104, at *2 (S.D.N.Y. May 12, 2015) (adopting Hometrust). Having reviewed those decisions, this Court is in agreement with their reasoning. "There are obvious efficiencies to be gained by centralizing the [I]ndemnification [Claims] in the Bankruptcy Court" because "Judge Chapman[] is intimately familiar with the facts of the Lehman cases and the legal theories involved." iFreedom, ECF No. 29, at 6. Moreover, "[t]he Bankruptcy Court may be able to streamline or centralize discovery across the various indemnification actions." Hometrust, 2015 WL 891663, at *3. And while the Indemnification Claims are "contractual in nature and do not raise substantive issues of bankruptcy law," there is value in the uniform "adjudication of [the] similar issues that [will] recur in [the] multiple disputes." Hometrust, 2015 WL 891663, at *4.[1]

[1] The interest in preventing forum shopping slightly favors LBHI. Here, various defendants facing Indemnification Claims—including Defendants—filed motions to dismiss in the Bankruptcy Court in 2016 and 2017. (Withdrawal Mot., at 4–5.) The Bankruptcy Court denied the last of Defendants' motions in October 2018. (Withdrawal Mot., at 5.) Defendants' timing in filing their motion to withdraw the bankruptcy reference arguably

Defendants' arguments to the contrary are unavailing, and, at heart, they are the same arguments rejected in iFreedom, LHM, and Hometrust. For example, Defendants claim it is inefficient to keep the Adversary Proceedings in the Bankruptcy Court because Judge Chapman cannot enter final judgment. (Withdrawal Mot., at 12.) Yet "experience strongly suggests that having the benefit of [a] report and recommendation [from the Bankruptcy Court] will save the district court and the parties an immense amount of time." Lehman Bros. Holdings Inc. v. Wellmont Health Sys., 2014 WL 3583089, at *4 (S.D.N.Y. July 18, 2014) (quotation marks omitted); see also Hometrust, 2015 WL 891661, at *3. Defendants also contend that this Court is "familiar with [the] straightforward contract disputes of the type" presented by the Adversary Proceedings. (Withdrawal Mot., at 12.) That may be true—but the Adversary Proceedings are part of the underlying Lehman Brothers bankruptcy, which has been aptly labeled "the largest and, arguably, the most complex [bankruptcy] in United States history." Lehman Bros. Holdings Inc. v. JP Morgan Chase Bank, N.A. (In re Lehman Bros. Holdings Inc.), 480 B.R. 179, 185 (S.D.N.Y. 2012). And equally unpersuasive is Defendants' point that uniform administration of the Indemnification Claims is an "illusory goal" because the Adversary Proceedings involve unique loans requiring individualized analysis. (Withdrawal Mot., at 13.) This argument—as LBHI correctly observes—ignores overarching similarities across the Indemnification Claims, namely whether LBHI is entitled to indemnification for breaches of the representations and warranties relative to the loans purchased from Defendants

signals an attempt to avoid resolving the merits of the Adversary Proceedings before what they view as an unfavorable forum.

and others. Accordingly, this Court concludes that the third Orion factor weighs heavily against withdrawing the bankruptcy reference at this time.[2]

Finally, Defendants request that, if this Court declines to withdraw the bankruptcy reference wholesale, it should nevertheless issue an order: (1) partially withdrawing the reference by, for example, granting this Court final authority over discovery disputes, or (2) announcing this Court's intent to withdraw the reference when the Adversary Proceedings are ready for trial. (Withdrawal Mot., at 14, 22–23.) This Court declines to do either. Defendants' first proposal—as counsel stated at argument—essentially asks this Court to treat Judge Chapman as a magistrate judge. (July 10, 2019 Arg. Tr. at 4 ("And in our view, we do not see this as much different than, for example, when your Honor reviews a ruling of your magistrate judge in a district court case.")). And, ironically, it would inefficiently shuffle the Adversary Proceedings between this Court and the Bankruptcy Court. Defendants' second proposal is unnecessary because—as noted above—the Adversary Proceedings may not reach trial.

CONCLUSION

For the foregoing reasons, Defendants' motion to withdraw the bankruptcy reference is denied without prejudice. Defendants may renew their motion at a later stage if their concerns about the unique nature of the Adversary Proceedings ultimately crystalize or if the Adversary Proceedings become ready for trial. The Clerk of Court is directed to terminate the motion pending at ECF No. 1 and mark this case closed.

Dated: August 23, 2019
New York, New York

SO ORDERED:

WILLIAM H. PAULEY III
U.S.D.J.

[2] Since the Orion factors weigh against withdrawing the bankruptcy reference, this Court declines to address the parties' dispute over whether Defendants' motion is timely.